

particularly so, since permit agencies in California are routinely attempting to regulate services and operations. There is no rational relationship between regulations of services by ROW permitting agencies and the burdens of the right of way. To allow ROW permit agencies to bootstrap their ROW authority onto service offerings will impede the development of a robust market for advanced and innovative interstate and intrastate telecommunications offerings, and must be explicitly prohibited.

C. Federal Barriers

In addition to these multi-layered state and federal entry barriers, Global Photon has even encountered entry barriers with one agency of the federal government, the National Oceanic and Atmospheric Administration (“NOAA”), which at this point appear to be insurmountable and which have forced Global Photon to delay the installation of a critical piece of its network.

1. National Oceanic and Atmospheric Administration (“NOAA”)

A critical part of Global Photon’s Global West’s coastal network would provide sub sea connectivity and redundancy from San Luis Obispo to San Francisco, by routing the system through the federally protected Monterey Bay National Marine Sanctuary (“MBNMS”). Administered by NOAA (which, in turn, is a subsidiary agency of the United States Department of Commerce), it is simply impossible for any company other than the largest global firms to place cable through the MBNMS.³² Unless a firm has literally infinite resources to comply with NOAA’s exorbitant ever-changing demands, and to produce a chain of environmental

³² Even for NOAA, the demands are outrageous. *See, e.g.,* Comments of Global Crossing, Section 706 NOI, p. 8 (asserting that it was forced to pay \$7 million in “special mitigation” commitments and \$4.75 million in fees to NOAA, for monitoring and related activities, *including for the construction of a marine sanctuary visitor center*) (emphasis in original).

impact studies in response to--at best--speculative and redundant agency and “environmentalist” concerns, no cable, however safe, will be installed in a federal marine sanctuary.

Moreover, NOAA has imposed fees for laying cable on the floors of the sanctuary that have been as high as \$120,000 per mile. NOAA has since withdrawn the exact fee amount that it will charge companies in response to environmentalist protests that the amount is too low, and from members of Congress who correctly point out that the amount is too high and is in conflict with the 1996 Act. Nonetheless, NOAA has commenced a rulemaking to solicit comment on its report “Fair Market Value Analysis for a Submarine Cable Permit in National Marine Sanctuaries.”³³ The title of the report alone suggests a fee methodology completely at odds with the cost-based approach that contradicts court pronouncements on use of rights-of-way and other necessary corridors essential for the provision of telecommunications services.³⁴

For nearly three years and at a cost of over \$7 million, Global Photon conducted exhaustive research and environmental studies. Indeed, its entire network design was predicated on environmental sensitivity. Because all active electronic components are housed at secure terrestrial sites, and because no amplifiers, regenerators, electric power supplies or any other equipment (except for the 1 inch diameter cable itself) are necessary,, there is minimal physical impact with the undersea environment. In addition, all maintenance, upgrade and repair work on the network (except in the extremely unlikely event of cable damage) is conducted *on land*. A more environmentally sensitive design is hard to imagine.

³³ 66 Fed. Reg. 43,135 (Aug. 17, 2001).

³⁴ See *Auburn*, 247 F.3d at 981 (“Some non-tax fees charged under the franchise agreements are not based on the costs of maintaining the right-of-way, as required under the Telecom Act”); *Berkeley*, 146 F.Supp.2d at 1100 (“Fees charged against telecommunications carriers must be directly related to the carrier’s actual use of the local rights of way”). See also *New Jersey Payphone*, 130 F. Supp. 2d at 638 (“Plainly, a fee that does more than make a municipality whole is not compensatory in the literal sense, and risks becoming an economic barrier to entry”).

Global Photon's initial authorization request (filed October 25, 1999) conclusively showed that the small-diameter fiber-optic cable would have no significant environmental impact on marine life or the sanctuary. But this was not enough. The seemingly endless stream of follow-up studies, shifting criteria and questionable "scientific" conclusions driven by purported environmental activists bent on denying Global Photon access to the ocean floor at critical points off the California coast forced Global Photon in October 2000 to focus on other parts of its network development, while keeping its application to route through the MBNMS active. Clearly, marine sanctuaries like the MBNMS represent unique national resources that should be protected from harmful commercial use. But the importance of these resources must be *truly* balanced against other important considerations such as the need for redundant offshore high-speed routes linking the international communities, and, national economic interests and security.

In a letter filed with NOAA on November 28, 2000 Tim Stammnitz, Global Photon's President, CEO concisely summarized Global Photon's mission and the unreasonable entry barriers that his company encounters with NOAA and virtually every level of government.

Let me emphasize that Global Photon Systems, over the short period of our existence and especially during the last three years, has made every effort to be environmentally responsible and to comply with all local, state, and federal permitting requirements. Our Company was founded on the notion that innovative, environmentally sustainable, small-diameter *pure* fiber optic undersea cables, with no electrical power in the cable, could provide many commercial and environmental benefits. Our only project is the Global West Network. . . . In practice, however, our only "product" during the last three years, since our original Scoping Meeting with the California Lands Commission in November 1997, has been permitting applications, environmental studies, agency and public scoping meetings and environmental documents. During the past 3 years, the expense for these activities is in the range of \$10 million—about \$6.5 million for the preparation of the [2,000+ page certified Final Environmental Impact Report] and related studies. . . .

[This is] related for one reason only: to underscore the point that the current “system” of local, state and national permitting and environmental regulations, as it applies to undersea cables in the marine environment is in serious need of “streamlining and tailoring.” In particular, due to the exigencies of state and national organizations having various jurisdictions and authorities over the coastal regions of the United States, the expertise and experience of environmentally conscious and responsible marine cable experts is being ignored, and new entry competitive telecoms like Global Photon are being suppressed in contravention of the Telecom Act of 1996.³⁵

Just as there is an explicit (albeit brazenly ignored) prohibition on state and local governments on unreasonable entry barriers to telecommunications services, there should be a similar prohibition on such restrictions for use federal lands and resources. This would provide the much needed “streamlining and tailoring” that Mr. Stamnitz has correctly identified as essential.

III. RECOMMENDATIONS TO THE COMMISSION

The Commission considers the issues in this NOI at a particular critical time. Not only is the vital domestic goal of facilities-based competition in the telecommunications industry at stake because of market factors, the Country’s national security will, in part, rest on the ability of telecommunications infrastructure to withstand physical attack. Extraordinary times demand extraordinary and concrete measures. The Commission must act now to assert its authority and leadership to ensure that telecommunications carriers can quickly build out infrastructure to ensure vibrant competition and strategically vital network redundancy. Global Photon respectfully requests that the Commission report to Congress Global Photon’s entry barriers reported in these comments and to take the following steps to achieve these critical objectives:

Reasonable ROW Regulations: The Commission must clarify the boundaries of what constitutes reasonable or unreasonable regulation of the public ROW. The Commission has a

³⁵ See Exhibit 9, Letter from Tim Stamnitz, President and CEO, Global Photon, to Deborah Malek, Conservation Policy and Planning Branch, National Marine Sanctuary Program, NOAA (Nov. 28, 2000) at 3.

number of procedural vehicles available to it to deliver the industry this relief, including the *City Signal* Petition for Special Relief and the Wireless Bureau's pending matter regarding access to rights-of-way. Clarification should come in the following form:

- To ensure that ROW permits are granted in a timely matter, the Commission should rule that the permit agency must grant a permit within 60 days of the filing of the permit. The permit should be deemed granted if the agency fails to act on the permit within that time frame.³⁶
- The Commission should issue regulations imposing fines on state and local agencies that willfully violate Section 253, either through delay or inaction on a pending permit application, or through the imposition of illegal ROW conditions and regulations on telecommunications carriers.
- The Commission must make clear that agencies may not bootstrap "services" regulation onto regulation of ROW access. If a carrier is authorized to provide telecommunications service pursuant to a state or federal license, an agency may not delve into the nature of services that a carrier might offer, whether voice, video or data services, wholesale or retail, tariffed common carrier or de-tariffed private carriage.
- In order to promote the unfettered exchange of ROW assets between or among certificated telecommunications carriers, the Commission should prohibit permit agencies' regulations requiring advance approval of the sale or creation of indefeasible rights of use (IRUs).

Reasonable ROW Fees: The Commission must remove the ability and incentive that permit agencies have to extort unreasonable fees from telecommunications carriers who are under intense pressure to deploy their networks expeditiously. To do so, the Commission must:

³⁶ For example, Michigan has successfully implemented similar regulations on permit timeframes. Michigan Telecommunications Act, MCL 484.2251(3); MSA 22.1469(251)(3): "A local unit of government shall approve or deny access under this section within 90 days from the date a provider files an application for a permit for access to a right-of-way, easement, or public place." *See In the matter of the complaint of Coast-to Coast Telecommunications, Inc. against the City of Birmingham, Michigan*, Case No. U-12354 (Oct. 24, 2000), p. 8 ("In the [MPSC's] view, the 90-day requirement is not merely a procedural guideline, but it is an important protection against delay in the permitting process.") The Commission, however, should not leave to the states the choice of adopt regulations to encourage the timely issuance of permits. To do so would likely lead to a patchwork quilt of differing permitting requirements that would inhibit the development of a national telecommunications infrastructure.

- Limit ROW fees to reasonable fixed and variable costs of the permit agencies in regulating the public ROW.
- Prevent permit agencies from evading the fee limitations by prohibiting them from requiring carriers to waive their rights to challenge fees as a condition of the ROW permit.
- Declare that in-kind services and facilities dedications as a condition of ROW access are inconsistent with competitive policies of the Telecom Act. If there is an overriding theme to the 1996 Telecom Act, it is to massage hidden subsidies out of the telecommunications world so that market forces can dictate the appropriate level of consumption of different, competing technologies.³⁷ Allowing permitting agencies to continue to demand free facilities, capacity and services as a condition for ROW access is antithetical to the competitive market that Congress sought to achieve in the 1996 Telecommunications Act will only lead to the creation of a new and complicated system of subsidies of interstate and intrastate telecommunications facilities.

Alternative Dispute Resolution: The FCC should implement an ADR “rocket docket” procedure under its rules that allow for carriers to bring bona fide ROW disputes with state and local permitting agencies to a quick resolution. The ADR procedures should allow for “paper hearings” to be resolved within 45 days of the filing of a complaint. In the interests of federal-

³⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-325, 11 FCC Rcd 15499 at ¶ 5 (rel. Aug. 8, 1996). (“These subsidies are intended to promote telephone subscribership, yet they do so at the expense of deterring or distorting competition. Some policies that traditionally have been justified on universal service considerations place competitors at a disadvantage. Other universal service policies place the incumbent LECs at a competitive disadvantage. ... The present universal service system is incompatible with the statutory mandate to introduce efficient competition into local markets, because the current system distorts competition in those markets.”) *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158, 12 FCC Rcd 15982 at ¶ 30-33, (rel. May 16, 1997)) (“By creating a portable and measurable system of subsidies, we utilize the power of the market to serve universal service goals more efficiently. That order, in short, guarantees that Congress’s universal service goals are met in a way that conforms with the pro-competitive and deregulatory goals of the 1996 Act.”) *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776 at ¶ 17 (rel. May 8, 1997) (“the existing system of largely implicit subsidies ... is not sustainable in its current form in a competitive environment. Implicit subsidies were sustainable in the monopoly environment because some consumers (such as urban business customers) could be charged rates for local exchange and exchange access service that significantly exceeded the cost of providing service, and the rates paid by those customers would implicitly subsidize service provided by the same carrier to others. By adoption of the 1996 Act, Congress has provided for the development of competition in all telephone markets. In a competitive market, a carrier that attempts to charge rates significantly above cost to a class of customers will lose many of those customers to a competitor.”)

state comity, the Commission could establish the procedures and standards for the ROW ADR and allow state utility commissions to manage the ADR proceedings by negatively preempting the Commission in a manner similar to the Commission's pole attachment state certification procedures.

Private Right of Action under §253: The Commission should recommend to Congress that it amend Section 253 to make clear that carriers can sue state and local permit agencies. Although the trend in litigation has been for courts to find an implied private right of action, this phase of the litigation creates unnecessary delays and expenses and raises barriers to entry for carriers.

Elimination of Entry Barriers by the Federal Government: Finally, the Commission should report to Congress entry barriers that carriers are experiencing across areas controlled by the federal government, and urge Congress to take action to limit these agencies' ability to impose *federal* entry barriers to competitive deployment.

IV. CONCLUSION

For the foregoing reasons, Global Photon respectfully requests that the Commission report Global Photon's experiences to Congress as detailed in these comments and take immediate action to issue rulings and regulations that prohibit unreasonable federal, state and local regulation of access to, use of and compensation for the public rights-of-way. Failure to do

so, and to do so quickly, may put another nail in the coffin of competition in the telecommunications marketplace.

Respectfully submitted,

GLOBAL PHOTON SYSTEMS, INC.

A handwritten signature in black ink, appearing to read "John Davidson Thomas", written over a horizontal line.

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Dated: September 24, 2001

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September 20, 2001

An Unimaginable Emergency Put Communications to the Test

By LISA GUERNSEY

ON any given day, Dave Johnson knows far more than most people about the many phone calls that are crisscrossing the United States. Mr. Johnson, a spokesman for AT&T ([news/quote](#)), works in the company's global network operations center in Bedminster, N.J., where he and his colleagues monitor 141 vast projection screens that provide minute-by-minute details on the state of the country's largest long-distance system. By watching computerized maps of the United States, they can tell in an instant whether there are any jams in long-distance traffic.

On an ordinary day, Mr. Johnson said, those maps are blissfully blank, showing no unusual activity. But on Tuesday, Sept. 11, as soon as Mr. Johnson and his colleagues saw the first television reports of the terrorist attacks on New York and Washington, they knew that this would not be an ordinary day.

"We all looked at each other and said, here we go," Mr. Johnson said. Within minutes, the screens lighted up, showing tens of millions of calls — worried relatives and friends — that threatened to clog the system. "What started as a quiet day," he said, "we instantly knew was not going to be quiet and peaceful any longer."

In Manhattan, the threat to the phone system was not just traffic — it was physical damage. The collapse of the World Trade Center crippled many of the connections that downtown Manhattan depended on, threatening crucial links for the police and emergency crews. Cellular sites were knocked out. A switching office for local service was badly damaged by falling debris and crushed pipes. Fiber-optic transport equipment was crushed. Power failures cut off high-speed Internet for many companies across the city.

By day's end, the telecommunications system in the country and particularly in New York had experienced what was probably the biggest test ever of its ability to withstand a physical attack and a national emergency.

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So far, the results are encouraging. Several companies trucked in temporary cellular towers. The 911 system was never disrupted. Long-distance lines were kept open for New Yorkers who were calling out. For most people, the Internet was slowed but intact.

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Bruised and battered, the communications infrastructure persevered, but not before providing lessons about how networks adapt to such extreme conditions and what more can be done to preserve them in emergencies.

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Verizon had to deal primarily with the effects of sheer destruction. The company's office at 140 West Street was a central switching office for local telephone traffic. Five stories of debris from 7 World Trade Center, which collapsed Tuesday afternoon, fell against the building, which was also hit by a massive steel girder from the North Tower. The basement is flooded with water from shattered pipes, rendering the backup power gener-

The loss of all service at 140 West Street left as many as 175,000 customers in the area unable to make or receive calls. It also affected companies that used as many as 3.5 million lines to send Internet traffic and private financial information through Lower Manhattan. Those lines, however, were either damaged or were attached to switches that have no power. Several companies used alternative communications channels to provide Internet access to their employees or su-

"I suspect every business in Manhattan is in some way affected by the loss of communications," says Ivan Seidenberg, co-chief executive of Verizon. "Lower Manhattan is a pretty influential part of the entire scheme of life."

Among the companies affected was Earthlink, which was unable to provide high-speed Internet service to more than 7,000 subscribers until Friday. The effect rippled out to Washington, D.C. Earthlink had been channeling some Washington subscribers through the New York center to ease its load. Kevin Brand, the company's vice president for network operations, said that to solve the problem the company rerouted traffic through several points in the Northeast that are connected to one of its partner companies.

Failures of backup power also hit several other network facilities around downtown Manhattan. AT&T was unable to run telephone-switching equipment in the World Financial Center because of power losses.

Many cables in the area are also in bad shape. When water mains broke after buildings collapsed, water seeped into cables that have since short-circuited, Verizon officials said. AT&T officials say they are certain that they lost several pieces of sophisticated equipment in the basement of the World Trade Center that were used to transport data over fiber-optic cables.

The phone system's losses were human as well. A half-dozen Verizon workers are assuredly dead or injured in the trade center's destruction, among them two technicians who were in the building on a maintenance mission. They had called their co-workers to tell them they were escaping the roof after they realized the extent of the fire caused by the first plane crash.

In the face of such horror, it is difficult to be heartened by the survival of a communications network. But some communications experts said that the ability of networks to adapt in such emergencies is a testament to the resilience of the system.

be crucial to the city's recovery.

Consider, for example, what happened that Tuesday in the AT&T operations center in E.N.J. That day, AT&T handled 431 million voice calls — 20 percent more than usual and had ever carried on a business day. The morning of the attacks, blue lines pointing toward City lighted up, indicating what the industry calls a "focused overload." Long-distance into New York's telephone system threatened local callers' ability to reach emergency se

The solution was to block some of the calls coming into the city. In industry terms, the s called "call gapping," and it was employed with a few keystrokes by network managers center. Managers typed commands that automatically prompted the AT&T system to ke percentage of its circuits open for outbound long-distance calls. For people around the c heard the message "All circuits are busy," call gapping was a likely cause.

"People get emotional about this topic because they think we are intentionally holding b calls," said Mr. Johnson at AT&T. "The local network in New York City is only going t many calls."

Locally, Verizon was doing its part to make sure that emergency calls could get through company provided nearly 2,400 spare circuits to city government agencies (including th fire departments), about 900 circuits to the state government and more than 2,600 to fed and the military.

The Internet also served its purpose as an efficient and relatively stable network. Unlike phone calls, which require an open circuit between two people, data sent over the Intern discrete packets that move over hundreds of different channels at the same time and rej destination, in a process known as packet switching. For the most part, that diverse distr packets allows them to avoid bottlenecks that result from blockages or damage to specif

Many people, for example, had more luck sending e-mail and instant messages than reat over the phone because the messages were automatically stored when barriers were enc then forwarded to open routes.

Paul Baran, a former computer scientist at the RAND Corporation, who is widely consi inventor of packet switching, said that the Internet's ability to stay up after the attacks w the "route around the trouble" model worked.

As planned, the telecommunications system also relied heavily on built-in redundancies companies, for example, have more than one line from their offices to high-speed acces the disaster did expose some of the limits of those contingency plans. Some of those mu travel the same conduits to the same routing centers. If something happens to those conc centers — as did in many cases on Tuesday — all the redundancy in the world doesn't h cables would be damaged.

Roy A. Maxion, director of the dependable-systems laboratory at Carnegie Mellon Univ Pittsburgh, has long preached the value of physical diversity in networks. "I wouldn't w alarmist about this," he said, "but what I think is interesting is how the system is not set these contingency plans are not in place." He added that "as a nation we are dangerously

Right now, telecommunications companies are focused on the task at hand: getting pow

clearing sites of debris, keeping lines up for emergency crews, monitoring the networks stock exchanges and running new cables for relocated businesses that had offices in the Center.

"I've been trying to find a way to say it," Mr. Johnson said. "But there is not a soft way t businesses that were normally served are no longer there."

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CALIFORNIA TRADE AND COMMERCE AGENCY

Gray Davis
Governor

December 11, 2000

Lon S. Hatamiya
Secretary

Chair Sara Wan
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: CDP E-00-008, Global West Network

Dear Chair Wan:

On behalf of the California Trade and Commerce Agency, I am writing to express my support for the Global West Network. This project offers a critical benefit to California's economic future, while also providing a positive benefit to the California environment.

Advances in telecommunications have made a major impact on every level of the California economy—from individuals to businesses, financial institutions, and government agencies. Our state economy has become increasingly dependent on the Internet as the primary conduit and operative for e-commerce, e-mail, information gathering and dissemination, business-to-business transactions, and interconnectivity to national and international trade and commerce.

The investment required to implement the Global West Network is substantial. Approximately \$150 million in core telecom infrastructure will be invested and installed within the next 6 months, provided this project obtains timely approvals. This investment will be made in California, and controlled and operated by a local San Diego company. In addition, the tax revenues and the boost to local employment are important to our State. Furthermore, Global Photon Systems, Inc., has offered reduced rates to academic institutions, and has pledged its support to UC San Diego/UC Irvine's Institute of Telecommunications and Information Technologies. The support of this project, one of three finalists selected by the Governor, is in response to his mandate to establish centers of excellence for technologies considered "key" to the economic future of the State.

The new information-based sector now accounts for approximately 20% of the total US economy. Recent studies published by the *Harvard Business Review* show that the expansion of information and knowledge-based industries, facilitated by projects like the Global West Network, are the primary means to increase productivity while sustaining the environment.

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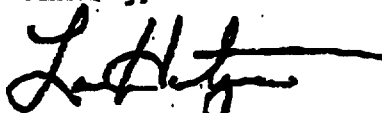
California Coastal Commission Letter
Global West Network
Page # 2
December 11, 2000

In addition, the Global West Network fulfills the need for critical infrastructure protection in California. The Network will provide "route diversity," which allows information to keep flowing along separate physical paths through the system, even if one link is disabled. The coastal communities of California are certainly at risk, since all the high-speed transport directly connecting coastal cities is concentrated along the Highway 101-telecom corridor. Thus, the diverse sea-route will provide an important public benefit. To this end, Global Photon Systems has offered the Office of Emergency Services secure back-up telecom capacity on the Global West Network.

The State Lands Commission has served as the lead agency on this project and, in accordance with the California Environmental Quality Act, has already certified a Mitigated Negative Declaration and approved leases for the project. Several additional conditions have been developed by the California Coastal Commission staff, and all have been accepted by the project applicant, resulting in a staff recommendation for approval. It seems the project has met the environmental standards of the State of California.

I hope you will appreciate our perspective in emphasizing the importance of the long-term economic benefits of fiber optic telecommunications and its public service for the State. Thus, I am requesting that you support your staff recommendation and issue a Coastal Development Permit. Thank you for your consideration.

Sincerely,



LON S. HATAMIYA
SECRETARY

Cc: Peter Douglas, Executive Director
California Coastal Commission
Coastal Commissioners
Tim Stummitz, CEO
Global Photon Systems, Inc.
Joan Dean, Director
California Trade and Commerce Agency, San Diego Regional Office



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RECEIVED DEC 08 2000

December 5, 2000

Ms. Sara Wan, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: CDP Application E-00-008, Global West Network

Dear Ms. Wan:

We understand that the CDP Application for the Global West Network is on the Coastal Commission's Agenda for the December meeting, and we are hoping that it will have a positive response. This is a rare opportunity to add fundamental protection to California's telecom infrastructure.

At the present time all high-speed fiberoptic transport providing direct coastal city-to-coastal city connections is installed along the US101 highway and/or coastal railroad corridor. This seems to have been the path of least resistance, at least in terms of the permitting of new telecom installation. Unfortunately, this concentration continues to make the fiberoptic transport vulnerable to a single catastrophe, whether from a construction mishap or from a seismic event.

The Global West system will improve reliability by several factors: (1) the undersea cable is intrinsically less prone to earthquake damage than a land conduit; (2) statistical studies on the West Coast show that undersea cable has 20-times better reliability than land systems; (3) perhaps most importantly, the marine route provides a totally diverse path so that a single event cannot cut off both marine and land circuits.

At the State level with OES, and at the Federal level with FEMA, there is concern for the performance of our lifeline systems during emergencies. Presidential Decision Directive Number 63 has drawn attention to the protection of critical telecom infrastructure, and a number of committee meetings have been held. However, the implementation of protection requires far more than committee meetings. A very substantial investment of time and money is needed to plan and install the systems.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dallas Jones".

DALLAS JONES
Director

c: Coastal Commissioners
Peter Douglas, Executive Director
Lon Hatamiya, Secretary of Trade and Commerce
Tim Starnitz, CEO, Global Photon Systems, Inc.



CALIFORNIA TRADE AND COMMERCE AGENCY

Gray Davis
Governor

December 11, 2000

Lon S. Hatamiya
Secretary

Chair Sara Wan
California Coastal Commission
45 Fremont Street, Suite 2000
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Re: CDP E-00-008, Global West Network

Dear Chair Wan:

On behalf of the California Trade and Commerce Agency, I am writing to express my support for the Global West Network. This project offers a critical benefit to California's economic future, while also providing a positive benefit to the California environment.

Advances in telecommunications have made a major impact on every level of the California economy—from individuals to businesses, financial institutions, and government agencies. Our state economy has become increasingly dependent on the Internet as the primary conduit and operative for e-commerce, e-mail, information gathering and dissemination, business-to-business transactions, and interconnectivity to national and international trade and commerce.

The investment required to implement the Global West Network is substantial. Approximately \$150 million in core telecom infrastructure will be invested and installed within the next 6 months, provided this project obtains timely approvals. This investment will be made in California, and controlled and operated by a local San Diego company. In addition, the tax revenues and the boost to local employment are important to our State. Furthermore, Global Photon Systems, Inc., has offered reduced rates to academic institutions, and has pledged its support to UC San Diego/UC Irvine's Institute of Telecommunications and Information Technologies. The support of this project, one of three finalists selected by the Governor, is in response to his mandate to establish centers of excellence for technologies considered "key" to the economic future of the State.

The new information-based sector now accounts for approximately 20% of the total US economy. Recent studies published by the *Harvard Business Review* show that the expansion of information and knowledge-based industries, facilitated by projects like the Global West Network, are the primary means to increase productivity while sustaining the environment.

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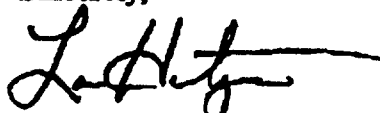
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In addition, the Global West Network fulfills the need for critical infrastructure protection in California. The Network will provide "route diversity," which allows information to keep flowing along separate physical paths through the system, even if one link is disabled. The coastal communities of California are certainly at risk, since all the high-speed transport directly connecting coastal cities is concentrated along the Highway 101-telecom corridor. Thus, the diverse sea-route will provide an important public benefit. To this end, Global Photon Systems has offered the Office of Emergency Services secure back-up telecom capacity on the Global West Network.

The State Lands Commission has served as the lead agency on this project and, in accordance with the California Environmental Quality Act, has already certified a Mitigated Negative Declaration and approved leases for the project. Several additional conditions have been developed by the California Coastal Commission staff, and all have been accepted by the project applicant, resulting in a staff recommendation for approval. It seems the project has met the environmental standards of the State of California.

I hope you will appreciate our perspective in emphasizing the importance of the long-term economic benefits of fiber optic telecommunications and its public service for the State. Thus, I am requesting that you support your staff recommendation and issue a Coastal Development Permit. Thank you for your consideration.

Sincerely,



LON S. HATAMIYA
SECRETARY

Cc: Peter Douglas, Executive Director
California Coastal Commission
Coastal Commissioners
Tim Stummitz, CEO
Global Photon Systems, Inc.
Joan Dcan, Director
California Trade and Commerce Agency, San Diego Regional Office

What Can We Do To Help?

Those of us at FinancialCAD are deeply saddened by the tragic events that occurred at the World Trade Center, at the Pentagon and in Pennsylvania.

As a company and as people, we had many relationships, developed over many years with customers, partners and friends that were directly impacted by these attacks.

We've been asking ourselves, what can we do to help? How can we help the businesses that were impacted survive and rebuild?

How can we help minimize the impact on the survivors and their families? The sense of mourning is overwhelming, but our strength to recover and rebuild must prevail.

As a supplier to the financial market place, we feel compelled to help businesses get up and running as soon as possible - to help them trade, add value and manage financial risk. We need to help them conserve their precious working capital, to survive and to prosper again.

To any persons and/or companies affected by the disaster in the World Trade Center area and who need to acquire the tools of the trade or need assistance in resuming operations - we are offering our financial instrument management software, web services, market data and technical expertise at no cost.

FinancialCAD will not accept, under any circumstances, any commercial benefit from this offer of assistance.

If you, or someone you know, could benefit from our help, please contact us toll free at 1-800-304-0702 or go to www.fincad.com

Respectfully,


David Glassco, CEO
FinancialCAD

FinancialCAD

Displaced Firms Find Space, Grace From Landlords

By PETER GRANT
Staff Reporter of THE WALL STREET JOURNAL

Less than 24 hours after terrorists attacked the World Trade Center, New York developer Douglas Durst received a frantic call from Greg Reimers, a Bank of New York executive. He was desperately looking for quarters for thousands of employees who had been evacuated from the disaster zone.

Mr. Durst had no available space. But then he thought of the new headquarters space he was completing in one of his Sixth Avenue skyscrapers for his own operation. He offered it to the bank for no charge other than his own costs. "How can you not do this?" he said.

Large and small businesses with surplus space and, in particular, the New York real-estate industry—famous for its cutthroat tactics—are showing their softer side in the wake of the cataclysmic destruction of the World Trade Center. Some landlords are offering short-term space for little or no profit to the hundreds of tenants that were in the destroyed complex or nearby buildings. The Real Estate Board of New York, the main trade group, has instructed all brokers to forgo commissions when finding temporary quarters for refugee tenants.

Dozens of technology companies that had been trying to sublet space are now offering it free instead to displaced businesses. For example, Production Designer LLC, a multimedia software developer, is camping out in the offices of Rising Tide Studios, publisher of the Silicon Alley Reporter. When Elliot Fox, Production Designer's chief operating officer, asked if he could pay something, Jason McCabe Calacanis, Rising Tide's chief executive, replied: "Just bring in some good coffee."

The interior-design firm Mancini Duffy, which safely evacuated all of its 145 workers from the 21st and 22nd floors of the second Twin Tower that was hit, didn't have long to worry about where they would relocate. Ralph Mancini, a principal, got a call from senior executives at J.P. Morgan Chase, one of its clients, which offered the firm surplus space that the bank has on Park Avenue. "They said, 'You're part of the J.P. Morgan Chase family and we have to take care of our family,'" Mr. Mancini says.

A number of customers of Qwest Communications Inc. and WorldCom Inc. have accepted their offers of temporary space in the two companies' New Jersey facili-

ties. One Qwest customer couldn't find help to move its command center, so Qwest employees helped put the firm's servers in cars and moved them to a new location.

Needless to say, not everyone is rising to the occasion. There are scattered reports of gouging both by landlords and tenants who had been struggling to sublease space in a deteriorating market. Some financially ailing companies, particularly those in the technology business, were said to be hoping that they could solve some of their problems with a lucrative real-estate deal.

But real-estate companies say they're determined to fight profiteering. Real-estate companies like Insignia/ESG and Newmark & Co. have instructed their brokers to refuse to work for landlords who gouge. "Anyone caught gouging will be pariahs in our community," says Jeff Gural, Newmark's chairman.

Executives at Reckson Associates Realty Corp., a large Manhattan office building owner, got wind that some of its tenants who were subleasing space were thinking about raising their rents. "We made it very clear that would be unacceptable to us," said Tod Waterman, a managing director.

But most landlords and brokers are fighting that temptation. Thomas Publishing Co. for more than three months has been trying to sublease about 25,000 square feet in Five Penn Plaza. Within days of the tragedy, Thomas agreed to forgo any profit and give the space back to the landlord so it could cut a deal with the Bank of New York. Thomas's brokers at Staubach Co., who had been working on the space for three months, didn't quibble about a commission. "The ques-

tion of our fee came up and we said, 'Just do what you think is fair,'" says Gregg Lorberbaum, a managing principal of Staubach's New York office.

Landlords outside the city also are putting compassion over profits. Oaktree Capital Management, a Los Angeles investment manager, is making buildings it owns in Philadelphia and Danbury, Conn., available to displaced tenants, charging only what it costs to operate them. "First, it's the right thing to do, and secondly, if we attract tenants who wouldn't ordinarily consider these buildings, they might end up making longer-term commitments," says Greg Geiger, an Oaktree managing director.

Many of the owners who are being especially generous are from New York's real-estate families who have helped build the city over many generations. Besides offering space to the Bank of New York, the Durst family made space available to the American Red Cross on West 57th Street, which might mean delays for a new development planned on the site. The Rudin family, which played a key role in the financial bailout of New York in the 1970s, is housing a command center at one of its buildings and a comfort center for rescue workers at another. "Two seconds after those requests came in they were granted," says John Gilbert III, chief operating officer of Rudin Management.

Real-estate executives say the true test of New York's landlords will be how they interpret the antigouging edict put out by the Real Estate Board. The board has instructed landlords to charge no more than what they would have received the Monday before the attack. But some are interpreting this to mean the rent they were asking, which often is about \$5 a square foot more than what they were willing to accept.

—Motoko Rich, Shaun Young and Deborah Solomon contributed to this article.

Airlines' Request for Government Aid Raises Issue of Executive Pay Reductions

By SUSAN CAREY
Staff Reporter of THE WALL STREET JOURNAL

Should airline-executive pay be on the table?

On Monday, as the financial gloom deepened for the nation's airlines in the wake of the terrorist attacks in New York and Washington, Jonathan Ornstein, chairman and chief executive of Mesa Air Group Inc., said he and Mesa's president would cut their base salaries by half and that the rest of the Phoenix-based regional airline's management would take a 20% pay cut.

"We're faced with a national disaster," Mr. Ornstein said, after lopping his annual salary to \$100,000. "We're in the difficult position of possibly furloughing people and

crat on the House Financial Services Committee, said that a federal disaster-relief package "should ... be conditioned on shared sacrifice from all those with a stake in the airlines, including management, labor and shareholders."

The New York congressman, who said he intends to support measured actions to assist the industry, made his point in a letter to Treasury Secretary Paul O'Neill and Transportation Secretary Norman Mineta. Labor leaders, who are keen to get the bailout enacted, don't want to pick a fight now with management by attacking executive compensation. But privately some expressed astonishment that the CEOs went to Washington without first announcing

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